IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8952 of 1999

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DISTRICT PANCHAYAT - Petitioner(s)

Versus

RANABHAI MULJIBHAI SARVAIYA - Respondent(s)

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Appearance :

MR PV HATHI for Petitioner No(s).: 1.

MR PRAVIN GONDALIYA for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 27/07/2005

ORAL JUDGMENT

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1. This petition is directed against the order dated 22nd June, 1999 passed by the Labour Court, in Reference [L.C.J.] No.525/90, whereby the Labour Court has directed the petitioner to reinstate the respondent in service on his original post with 20% back wages.

2. The short facts of the case are that the respondent was working as a Chowkidar on daily wage basis. Since the respondent raised a demand to regularize his service, the petitioner without following any procedure under the Industrial Disputes Act, 1947 orally terminated his service w.e.f. 20th July, 1982.

2.1. Feeling aggrieved by the said action of the petitioner, the respondent raised an industrial dispute which was ultimately referred to the Labour Court for adjudication. The Labour Court after appreciating the materials produced on record, passed the impugned award. Hence, this petition.

3. While admitting the matter, this Court on 3rd April, 2000, had stayed the operation of the impugned award qua back wages only. It is stated that pursuant to the aforesaid order, the respondent is already reinstated in service. Therefore, the only question which is now required to be considered by this Court is with regard to grant of 20% back wages to the respondent.

4. Mr. Hathi learned counsel for the petitioner has

contended that since the respondent was working on a daily wage basis, no procedure was required to be followed before retrenching him. In support of his contention he has placed reliance on the decision of Apex Court in the case of Himanshu Kumar Vidyarthi & Ors. v. State of Bihar & Ors., reported in JT 1997 (4) S.C. p. 560, wherein it has been held that daily wager had no right to post and their dis-engagement is not arbitrary and since they are temporary employees working on daily wage basis their dis-engagement from service cannot be treated to be under the Industrial Disputes Act, 1947.

4.1. Mr. Hathi has next relied upon the decision of this Court in the case of Halvad Nagar Palika & Ors., v. Jani Dipakbhai Chandravadanbhai &Ors., reported in 2003 (2) G.L.H. p.397 wherein the Court has held that when appointments were made without following due procedure of statutory rules or the recruitment policy, it is immaterial as to whether the workmen have completed the service of 240 days in a year or not.

5. As against that Mr. Pravin Gondaliya learned advocate for the respondent has submitted that the Labour Court was justified in awarding reinstatement in service

with 20% back wages inasmuch as the petitioner has without following the procedure prescribed under the Industrial Disputes Act, 1947 terminated the services of the respondent.

5.1. In support of his contention Mr. Gondaliya has placed reliance on the decision of the Apex Court in the case of M.C.D. v. Praveen Kumar Jain reported in A.I.R. 1999 S.C. p. 1540 wherein the Court has held that when respondent is discharged from the service on account of misconduct is valid but if the order is passed without conduct of disciplinary proceedings, the same is invalid. It has further held that it is discharge simpliciter, which is violative of Section 25F of the I.D. Act.

5.2. I have heard the learned counsel for the parties and have perused the materials placed on record. However, in the impugned award the Labour Court has not given any cogent reasons as to on what basis it has awarded 20% back wages to the respondent. Moreover in view of the principle laid down by the Apex Court in the case of **General Manager, Haryana Roadways v. Rudhan Singh reported in J.T. 2005 (6) S.C. p. 137** wherein it has been held that an order of payment of back wages should not be

passed in a mechanical manner, but a host of factors are to be taken into consideration before passing any such order, the order of the back wages is required to be quashed and set aside.

6. In the result, the petition is partly allowed. The order dated 22nd June, 1999 passed by the Labour Court, in Reference [L.C.J.] No.525/90, qua the direction of the back wages is quashed and set aside and rest of award is confirmed. Rule is made absolute to the aforesaid extent with no order as to costs. The petitioner shall pay all the benefits from the date of publication of the award till the reinstatement within a period of three months from the date of receipt of writ of this Court.

[K.S. JHAVERI, J.]

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